



**United States House Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce
2125 Rayburn House Office Building**

March 15, 2019

To the Honorable Robin L. Kelly:

Please find the below response regarding the following question:

Many proposals direct the FTC to establish rules to address advertising practices that result in discrimination. Do you have ideas in mind for what kind of rules the FTC could put in place?

The FTC, or a newly created, well funded, and independent Data Protection Agency (DPA), empowered with full rulemaking authority, should rule that it is unlawful to process personal information for the purpose of advertising, marketing, soliciting, offering, selling, leasing, licensing, renting, or otherwise commercially contracting for housing, employment, credit, insurance, voting, or education opportunities, in a manner that discriminates against or otherwise makes the opportunity unavailable on the basis of a person or class of persons' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, biometric information, lawful source of income, or disability.

The FTC or DPA should promulgate regulations to define and prohibit unfair or deceptive advertising, targeting, personalization, and delivery practices. In specifying unfair or deceptive practices, the FTC or DPA should consider::

- Established public policy, such as civil rights laws, that can guide the determinations of what constitutes an unfair or deceptive practice;
- The methods available or used to target, personalize, and deliver online advertisements, and their effects;
- Research of, and methodologies for, measuring discrimination, including disparate impact, in advertising, targeting, personalization, and delivery practices;
- The role of all actors in the digital advertising ecosystem, including advertisers; social media platforms; search engines; websites and applications that carry advertisements; advertising networks; data brokers; personal device manufacturers; and other relevant entities;
- Harms caused by predatory or manipulative marketing practices targeting marginalized or vulnerable populations, including on the actual or perceived basis of race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial



status, biometric information, personal health information, lawful source of income, disability, age, criminal record, or immigration status;

- Whether, and at what age, minors are able to distinguish between regular content and paid advertisements;
- Methods for fairly promoting equal opportunity in housing, employment, credit, insurance, education, or healthcare, through targeted outreach to underrepresented populations in a fair and non-predatory manner;
- How to increase diversity and inclusion by fairly promoting content generated by and small businesses owned by members of underrepresented populations; and
- Other privacy risks posed by advertising, targeting, personalization, and delivery practices.

Crucially, any anti-discrimination provisions must allow actors to further equal opportunity in housing, education, voting, and employment by targeting underrepresented populations where consistent with civil rights laws.

Robust enforcement of the prohibition on discrimination should include both intentional efforts to discriminate as well as disparate impacts. To ensure robust enforcement and relief for those impacted, the FTC should also eliminate “first bite of the apple” under Section 5(m)(1)(B) which restricts the Commission’s ability to subject violators to monetary penalties. Additionally, a private right of action should be a part of these rules. Any person may bring an action seeking relief from a violation of the rules or regulations promulgated on their own behalf or on behalf of themselves and the general public. A nonprofit organization may also, on behalf of itself or any of its members, on behalf of an individual or class of individuals, or on any such behalf and on behalf of the general public, bring an action seeking relief from a violation of these rules

To ensure that discriminatory practices are monitored and addressed, the rules set forth by the FTC or DPA should require covered entities that are not small businesses to regularly audit their processes to determine that their practices work as intended and do not discriminate in a prohibited manner, and that they identify and implement reasonable measures to mitigate those discriminatory impacts.

I’m happy to say more or provide further information upon request.

Sincerely,

Brandi Collins-Dexter
Color Of Change